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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

UNITED MODERNS v. RATHBUN et al.

Jan. 18, 1906.

[52 S. E. 552.]

1. Insurance—Mutual Benefit Insurance—Actions—Burden of Proof.—In an action on a beneficial certificate, where the constitution and laws of the order are introduced in evidence, the burden is on plaintiffs to show any change in such laws subsequent to the issuance of the certificate in suit affecting their rights.

2. Same—Nonpayment of Assessments—Waiver of Default.—A beneficial certificate required insured to comply with the constitution and laws of the order, and provided that a failure to pay dues or assessments should constitute a forfeiture of all right to benefits. The constitution provided that members failing to make payments as they became due, thereby elected to terminate their membership. Insured failed in health and fell in arrears in the payment of assessments, whereupon his friends undertook to keep his certificate in force for him. Accordingly the financial agent of the order received a payment of back assessments from a friend of insured, who afterwards sent a check to insured's mother for insured's salary, without reserving anything for the payment of assessments. The following month, when the financial agent of the order called on the friend for later assessments, the latter asked him to see insured's mother, and, if she did not pay the assessments, to come back to him. Insured's mother refused to pay the assessments, the financial agent did not return to the friend, and insured died in default. Held, that there was no waiver of the default on the part of the order.

3. Appeal—Disposition of Cause—Entry of Proper Judgment.—Where a case is submitted to the presiding judge without a jury, and he passes upon the law and the evidence, the Court of Appeals hears the cause as on a demurrer to the evidence, and will enter such judgment as the lower court should have rendered.

[Ed. Note.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, § 4581.]

RANKIN et al v. TOWN OF HARRISONBURG.

Nov. 23, 1905.

[52 S. E. 555.]

1. Eminent Domain—Erection of Dam—Flooding Adjacent Lands—Compensation.—Where the effect of raising a dam across a river

10 feet for the formation of a municipal water power would be to throw back the water for a long distance beyond the boundary line of the lands of riparian owners, to flood the banks of the river, to impose a greater volume of water on the bed, destroy a ford, and render the adjacent lands more liable to overflow, and greatly to alter the natural flow and condition of the stream, such facts of themselves were sufficient to entitle such owners to compensation.

[Ed. Note.—For cases in point, see vol. 18, Cent. Dig. Eminent Domain, 254.]

2. Same—Apportionment—Owners in Severalty—Agreement.—Where riparian proprietors owned land on both sides of a stream in severalty, which would be damaged by the raising of a dam to create a municipal water power, but no one of them owned the right to abut a dam on both banks of the river within the distance measured by the eddy water of the proposed dam, such owners were entitled to orally agree that the compensation to be received for such water power should be distributed among them in particular proportions, and to execute a deed inter se before any interference with the rights sought to be condemned to carry such oral agreement into effect.

3. Same—Right to Compensation.—Where a town sought to condemn a water power by raising a dam across a river, the fact that the riparian owners whose lands would be damaged by the raising of the dam were owners in severalty, and no one of them owned land on both sides of the river, was no defense to the city's liability for compensation for the rights taken.

HALL, et al. *v.* HALL, et al.

Jan. 18, 1906.

[52 S. E. 557.]

1. Equity—Practice—Decree—Issues.—Where, in a suit in equity against the heirs and distributees of a decedent for the settlement of the estate, complainants asserted certain demands and the cause was referred to a commissioner, who reported that the demands had been paid, a decree finding that the demands were fraudulent and without consideration was unwarranted; no such issue having been raised by the pleadings in regard to such demands, and none in the commissioner's report.

[Ed. Note.—For cases in point, see vol. 19, Cent. Dig. Equity, § 1001.]

2. Appeal—Report of Commissioners—Review.—A report of a commissioner in chancery, except as to errors apparent on its face, is prima facie correct; and where the evidence is conflicting the appellate court will not reverse the action of the trial court in overruling